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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re T.N.W. et al., Persons Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

D.E.,

Defendant and Appellant.

D055658

(Super. Ct. No. J517007A-E)

APPEAL from a judgment of the Superior Court of San Diego County, Yvonne E. Campos, Judge. Affirmed.

D.E. appeals following the juvenile court's removal from her care of her three sons, 16-year-old T.N.W., 15-year-old T.R.W. and 14-year-old R.W., and her two daughters, 11-year-old I.W. and 6-year-old A.L. D.E. contends the true findings on

supplemental dependency petitions (Welf. & Inst. Code, § 387)¹ were unsupported by substantial evidence and the juvenile court abused its discretion by granting the children's modification petition (§ 388). We affirm.

BACKGROUND

D.E. has a long history of involvement in domestic violence in the children's presence. That history began in 1995 with the father of her three sons. The violence continued during D.E.'s subsequent relationship with Eric L., A.L.'s presumed father. In February 2008 the San Diego County Health and Human Services Agency (the Agency) offered D.E. voluntary services to address her domestic violence issues. D.E. declined. In March the Agency filed dependency petitions because the children were exposed to violence between D.E. and Eric. D.E. obtained a temporary restraining order against Eric and the court ordered the children detained with D.E. D.E. understood she needed to participate in services and abide by the restraining order for the children to remain in her home.

In April 2008 the juvenile court entered true findings on the petitions. In May it placed the children with D.E. and ordered family maintenance services. The children's case plans included individual therapy. D.E.'s case plan included individual therapy; a psychological evaluation; a domestic violence program; parenting education; a substance abuse assessment and, if necessary, drug treatment. D.E. believed she did not need services and complied with the case plan only to a limited extent.

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise specified.

Within a few weeks of the May 2008 placement order, T.R.W. was arrested for assault with a deadly weapon and taken to juvenile hall. He entered a negotiated admission and was returned to D.E.'s care. In July A.L.'s teacher reported that A.L.'s unstable home was impairing her school performance. In late 2008 one of the children disclosed a recent violent incident between D.E. and Eric. D.E. denied the incident. Five days after the denial, on October 15, D.E. told the Agency's social worker she and the children were moving to Texas the following weekend. D.E. cited financial reasons and said she had relatives and friends in Texas. On October 16 D.E. gave the Agency the Texas address where she planned to live. Against the social worker's advice, D.E. moved with the children to Texas. A few days after the move, the Agency asked its Texas counterpart to check on the children. The Texas agency did so and reported there were no safety concerns. The Agency sought to initiate proceedings under the Interstate Compact on the Placement of Children (Fam. Code, § 7900 et seq.), but D.E. did not complete the required documentation and the case was closed.

The Agency sent D.E. letters regarding services in Texas. She received the letters but did not respond. By November 2008 D.E. and the children had moved to an undisclosed address and their telephone had been disconnected. The Agency contacted the children's schools in Texas and learned the children were doing well. D.E. did not provide her new address to the court, as she had been ordered to do.

At a January 2009 family maintenance review hearing the court continued the children's placement with D.E. The court approved an updated case plan for D.E. including an anger management program. Later that month the Agency obtained D.E.'s

new address and telephone number from a school official. When the official informed D.E. of this, D.E. responded, "I don't know how they found me. I was trying to get away from the CWS. That's why I moved." The social worker left D.E. a voicemail message but received no response.

In February 2009 the Agency requested a hearing regarding D.E.'s lack of participation in services. On March 17, the day of the hearing, the children's counsel filed a section 388 petition. The petition sought modification of the May 2008 order placing the children with D.E. and requested the children be detained. The court granted the detention request. On May 14 the children were detained in Polinsky Children's Center in San Diego. D.E. also returned to San Diego. In June the Agency filed section 387 petitions.

T.N.W., T.R.W. and R.W displayed extreme behavioral problems while detained, including claiming gang affiliation, targeting younger children, possessing pills, and threatening staff members. T.N.W. asked for medication so he could sleep. In June 2009 T.N.W. and R.W. were moved to a group home and I.W. and A.L. were moved to a foster home. In July T.R.W. was moved to a different group home. A few days later he was arrested and incarcerated in juvenile hall, charged with misdemeanor battery. Within a few weeks he was returned to his group home.

In August the court entered true findings on the section 387 petitions, granted the section 388 petition and ordered the children removed from D.E. The court placed A.L.

with Eric and ordered T.N.W., R.W. and I.W. detained with Eric.² The court set a further hearing to address placement for T.N.W., R.W., I.W. and T.R.W.

DISCUSSION

The hearing on a section 387 petition consists of an adjudicatory phase and a dispositional phase. (*In re Javier G.* (2006) 137 Cal.App.4th 453, 460.) During the adjudicatory phase, the Agency must prove, by a preponderance of the evidence (Evid. Code, § 115), "the previous disposition has not been effective in the rehabilitation or protection of the child." (§ 387, subd. (b); *In re Javier G.*, *supra*, at pp. 459-460.) If the Agency meets this burden, the case proceeds to the dispositional phase. (*In re Javier G.*, *supra*, at pp. 461-462.) During that phase, the court determines whether there is a need to remove the child from the current level of placement. (*Id.* at pp. 460-461.) If the current placement is with a parent, removal requires clear and convincing evidence of "one of the applicable standards found in section 361, subdivision (c)." (*Id.* at p. 462.) The standard applicable here is whether "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody. . . ." (§ 361, subd. (c)(1).) We review the juvenile court's

² D.E. complains that Eric did not participate in any reunification services until July 2009 and had never had sole custody of the children. In January 2009 the court terminated Eric's reunification services at his request. Eric later began participating in services voluntarily and the court reinstated his reunification services. The record does not disclose whether he ever cared for the children on his own.

rulings at both phases of the section 387 hearing for substantial evidence. (*In re Javier G.*, *supra*, at pp. 459, 461-463.)

Here, the section 387 petitions alleged the previous disposition had been ineffective in protecting or rehabilitating the children and D.E. could no longer provide adequate care and supervision. Factually, the petitions alleged D.E. "[had] been receiving family maintenance services to address her long history of domestic violence" but had not complied with her case plan, resulting in a new incident of domestic violence in October 2008, and she "had absconded with the child[ren] to Texas and failed to maintain communication with the Agency."

Clearly, the placement with D.E. was ineffective in protecting the children. Domestic violence was the cause of this case, and more violence occurred within months of the placement. Furthermore, there is substantial evidence of a substantial danger to the children's "physical health, safety, protection, or physical or emotional well-being" (§ 361, subd. (c)(1)) if they were returned to D.E., and removal was the only reasonable means of protecting their physical health. Contrary to D.E.'s suggestion, the removal was not premised solely on her failure to complete her service plan. (*In re Paul E.* (1995) 39 Cal.App.4th 996, 1003-1004.) Rather, it was based on the danger to the children from her refusal to address her long history of domestic violence and acknowledge its affect on the children.

In May 2008, shortly after the court placed the children with D.E., the children's therapy was discontinued because D.E. did not take them to therapy sessions.³ Several months later, after the new violence between D.E. and Eric, D.E. took the children to Texas without the court's permission and went into hiding. D.E. did not enroll the children in therapy in Texas, and did not obtain any services for herself.

During the course of this case, D.E. was verbally aggressive with the social worker, even in the children's presence, and was disruptive in court. At a hearing in June 2009 D.E. yelled and made a scene, upsetting the children and causing I.L. to cry. D.E. ignored the children's and the social worker's pleas that she calm down. D.E. believed her behavior was justified and denied she needed anger management training.

D.E. did not begin therapy until three months after the court ordered the children detained. In therapy D.E. minimized and denied the protective issues and the reasons for the children's detention. By the time of the hearing D.E. had not made any progress on her case plan. She had not begun domestic violence treatment or undergone a psychological evaluation. Although T.R.W.'s violent behavior began while he was placed with D.E., D.E. believed the children's problems were primarily due to their removal from her custody, with peer pressure and their exposure to domestic violence being lesser factors.

³ D.E. blamed transportation difficulties, although the Agency gave her bus passes.

In view of our conclusion the court did not err by granting the section 387 petitions, we need not discuss D.E.'s contention the court abused its discretion by granting the children's section 388 petition, which also sought the children's removal.

DISPOSITION

The judgment is affirmed.

BENKE, Acting P. J.

WE CONCUR:

NARES, J.

HALLER, J.